

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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RAMONA G. TORRES,

Case No. 2:24-cv-01032-GMN-EJY

Plaintiff,

ORDER

v.

CARDENAS MARKETS, LLC, a foreign
limited liability company; DOES I-X; and ROE
CORPORATIONS I-X, inclusive,

Defendants.

Pending before the Court is Defendant Cardenas Markets, LLC's Motion for Protective Order re 30(b)(6) Topics. ECF No. 22. The Court considered the Motion, the Opposition (ECF No. 24), and Reply (ECF No. 27). The Court finds as follows.

I. Relevant Background

On March 12, 2025, the Court held a lengthy hearing regarding the then-pending Motion to Compel filed by Plaintiff. ECF No. 23. The Court granted Plaintiff's Motion, in part, ordering production of some documents requested. Defendant objected to a portion of the Order and that Objection remains pending at this time. The Court notes this history because, in large part, the Federal Rule of Civil Procedure 30(b)(6) deposition topics at issue in the instant Motion mirror, in scope, issues addressed by the Court at the March 12th hearing. Presently, Defendant seeks an order protecting it from having to prepare a 30(b)(6) witness on four topics identified by Plaintiff. These include Topics 22, 38, 39, and 48. Each is addressed below.

II. Discussion**A. The Applicable Standards.**

Federal Rule of Civil Procedure 26(c)(1) allows a party to move for a protective order to prevent annoyance, embarrassment, oppression, or the undue burden or expense of discovery. Fed. R. Civ. P. 26(c)(1). This Rule is designed to allow for "reasonable limits on discovery through increased reliance on the common-sense concept of proportionality." *Roberts v. Clark Cnty. Sch.*

1 *Dist.*, 312 F.R.D. 594, 603 (D. Nev. 2016). “District courts possess ‘wide discretion to determine
 2 what constitutes a showing of good cause and to fashion a protective order that provides the
 3 appropriate degree of protection.’” *Swenson v. GEICO Cas. Co.*, 336 F.R.D. 206, 209 (D. Nev.
 4 2020) (quoting *Grano v. Sodexo Mgmt., Inc.*, 335 F.R.D. 411, 414 (S.D. Cal. 2020)). The party
 5 moving for a protective order has the burden of persuasion. *E.E.O.C. v. Caesars Ent., Inc.*, 237
 6 F.R.D. 428, 432 (D. Nev. 2006). The burden is met by demonstrating a particular need for protection
 7 supported by specific facts, as opposed to broad allegations of harm. *Swenson*, 336 F.R.D. at 208-
 8 09.

9 Under Federal Rule of Civil Procedure 30(b)(6), a business entity may be deposed resulting
 10 in the obligation to designate one or more individuals to testify on its behalf. The testimony of a
 11 Rule 30(b)(6) deponent represents the knowledge of the entity, not the knowledge of the individual
 12 witness. *Great Am. Ins. Co. of N.Y. v. Vegas Constr. Co.*, 251 F.R.D. 534, 538 (D. Nev. 2008). To
 13 this end, the party seeking the deposition must issue a notice that “describe[s] with reasonable
 14 particularity the matters for examination.” Fed. R. Civ. P. 30(b)(6). The business then must prepare
 15 the deponent “to fully and unevasively answer questions about the designated subject matter.” *Great*
 16 *American Insurance*, 251 F.R.D. at 539. This duty to prepare “goes beyond matters personally
 17 known to the witness or to matters in which the designated witness was personally involved.”
 18 *Risinger v. SOC, LLC*, 306 F.R.D. 655, 663 (D. Nev. 2015). The deponent must be “thoroughly
 19 educated” on the topics. *Great American Insurance*, 251 F.R.D. at 539. These are “substantial
 20 responsibilities and burdens on the responding corporate party.” *Memory Integrity*, 308 F.R.D. at
 21 661.

22 B. The Disputed 30(b)(6) Topics.

23 Plaintiff’s Topic 22 asks Defendant to prepare one or more witnesses to testify to the position
 24 and or location of all video cameras on January 18, 2023 at the Cardenas Market where Plaintiff fell.
 25 This topic mirror Request for Production No. 26 discussed and ruled upon at the March 12, 2025
 26 hearing. The Court previously found Plaintiff’s request for production was overbroad, but allowed
 27 production of screen shots pertaining to a limited number of cameras covering the area around where
 28 Plaintiff fell. See ECF No. 27 at 3 (depicting the area of the Cardenas Market from which screen

1 shots were to be produced). Neither Plaintiff nor Defendant objected to this portion of the Court's
2 prior Order.

3 Plaintiff now seeks a small expansion of the position or location of cameras previously
4 permitted by the Court. That is, in addition to asking questions related to the cameras stationed at
5 locations numbered 14, 18, 19, 20, and 23, depicted by Defendant at ECF No 27 at 3, Plaintiff seeks
6 "to [also] ask whether there are any security cameras near [locations numbered] 15, 16, and 17 that
7 would point in the direction of [Plaintiff's] fall. ECF No. 24 at 7. This inquiry is not so broad or
8 burdensome such that it materially changes what the Court previously ordered. Moreover,
9 Defendant fails to offer specific facts to support a contrary decision.

10 The Court adopts its reasoning and ruling from the March 12, 2025 hearing. Plaintiff may
11 ask questions regarding the position and location of security cameras at the locations numbered 14,
12 18, 19, 20, and 23, as well as security cameras at or near the locations numbered 15, 16, and 17, all
13 of which are depicted in the diagram at ECF No. 27 at 3. Accordingly, to the extent the inquiry
14 regarding cameras near the locations numbered 15, 16, and 17 is contrary to Defendant's position in
15 the Motion for Protective Order, the Motion is denied.

16 Topic 38 asks Defendant to prepare a witness to speak to trips or falls at any Cardenas Market
17 in Clark County over the five years preceding Plaintiff's fall. This mirrors Request for Production
18 No. 6 addressed on March 12, 2025. The Court ordered Defendant to produce a "loss run" report
19 for slip and falls between January 18, 2020 and January 18, 2023 at the six Las Vegas area Cardenas
20 Market locations. Defendant objected to this Order to the extent it requires production of
21 information regarding stores other than the store at which Plaintiff fell. *See* ECF No. 26 at 6.
22 However, Plaintiff presented information demonstrating that Defendant's markets share information
23 across its stores such that events at a location other than where Plaintiff fell is proportional to the
24 needs of the case as such information may support the at-issue element of foreseeability applicable
25 to this dispute.

26 The Court finds Topic 38 is properly limited to slip and falls between January 18, 2020 and
27 January 18, 2023 at all six Las Vegas Cardenas Market stores. However, given that Defendant's
28 Objection remains pending at this time, the Court, *sua sponte*, stays this Order until such time as the

1 pending Objection is ruled upon. If the Objection is overruled, inquiry into Topic 38 is limited as
 2 stated. If the Objection is sustained, the parties will be required to meet and confer regarding how,
 3 if at all, this topic may be modified to comply with the Order of the Court.

4 Topic 39 asks the Defendant's 30(b)(6) to be prepared to testify to facts relied upon to support
 5 affirmative defenses. Defendant argues that this topic should be converted to interrogatories as there
 6 is a risk of prejudice given the likelihood that affirmative defenses will require testimony implicating
 7 legal issues and the witness appearing will lack the legal training necessary to respond. As discussed
 8 by the court in *Woods v. Standard Fire Insurance Company*, 589 F.Supp.3d 675, 684-85 (E.D.
 9 Kentucky 2022):

10 [T]here is a split in authority on this issue. *See, e.g., Radian Asset Assur.,*
 11 *Inc. v. Coll. of the Christian Bros. of N.M.*, 273 F.R.D. 689, 691 (D.N.M. 2011)
 12 ("Courts have split whether to allow parties to use 30(b)(6) depositions to explore
 13 facts underlying legal claims and theories."). Some courts have precluded parties
 14 from using Rule 30(b)(6) depositions to probe legal claims and theories. *See, e.g.,*
 15 *Fox v. Amazon.com, Inc.*, No. 3:16-cv-3013, 2017 WL 9476870, at *5 (M.D. Tenn.
 16 Sept. 21, 2017) ("[T]he decision to admit or deny the allegations in the complaint
 17 is a decision made by counsel at the time the answer was filed. That decision by
 18 counsel is privileged."); *In re Indep. Serv. Orgs. Antitrust Litig.*, 168 F.R.D. 651,
 19 654 (D. Kan. 1996) (finding that a party's attempt to discover facts supporting a
 20 defendant's denials and affirmative defenses "implicate[d] serious privilege
 21 concerns"). The rationale supporting this position is ... that such questioning may
 22 infringe upon or possibly reveal attorney impressions.

23 Conversely, other courts have permitted such deposition topics to the extent
 24 that the underlying facts, not attorney impressions, are at issue. *See, e.g., Yerkes v.*
 25 *Weiss*, No. CV 17-2493 (NLH/AMD), 2019 WL 12056384, at *6 n.2 (D.N.J. Sept.
 26 30, 2019) (analyzing propriety of Rule 30(b)(6) questions using standards for Rule
 27 33 contention interrogatories); *Dennis v. United States*, No. 3:16-cv-3148-GBN,
 28 2017 WL 4778708, at *9 (N.D. Tex. Oct. 23, 2017) (explaining that contention
 interrogatories seeking the factual basis of a denial is not protected work product,
 and that "[t]he same analysis applies to a Rule 30(b)(6) deposition topic seeking
 the identification of facts"); *see also Radian Asset Assur., Inc. v. College of the*
Christian Bros. of New Mexico, 273 F.R.D. 689, 692 (D. New Mexico 2011)
 (stating that "allow[ing] parties to craft [Rule] 30(b)(6) inquiries ... advances the
 policy underlying the rules favoring disclosure of information").

24 Defendant raises the issues of legal versus factual inquiry and contends interrogatories are the better
 25 tools for exploring an opponent's legal theories. ECF No. 27 at 5. Defendant dismisses Plaintiff's
 26 contention that she only seeks facts, arguing that "at its core" Topic 39 "requests a legal analysis."
 27 *Id.* at 6.

1 The five affirmative defenses asserted by Defendant include: (1) Plaintiff was comparatively
2 negligent; (2) the hazard Plaintiff alleges was open and obvious; (3) the event alleged in the
3 complaint was caused by an intervening, superseding cause; (4) the event alleged in the complaint
4 was solely caused by a non-party; and (5) Plaintiff did not mitigate damages. Each of these defenses
5 is a legal concept the nuances of which are not generally understood by non-lawyers. By way of
6 example only, a question asking a 30(b)(6) witness to testify to facts the business entity contends
7 supports its assertion that a plaintiff was “comparatively negligent” would not be knowledge
8 ordinarily possessed by a fact witness, even a 30(b)(6) fact witness, unless that witness had legal
9 training. Moreover, a witness unfamiliar with the legal standards applicable to comparative
10 negligence might inadvertently respond in a manner contrary to the position of the company on
11 whose behalf the witness is appearing and testifying. On the other hand, and again by way of
12 example only, questions such as: “Do you contend the Plaintiff caused the liquid to spill on the
13 floor?” and “Do you contend Plaintiff slipped in the liquid she spilled?” address facts applicable to
14 comparative negligence, but do not ask the witness to address that legal concept. While Plaintiff’s
15 intent may be to address facts only, the topic seeking a person most knowledgeable about
16 “comparative negligence” fails to make that clear.

17 The Court finds the Topic 39, as stated, calls for a witness to be most knowledgeable about
18 facts relevant to a legal concept—here comparative negligence—without the reasonable specificity
19 that would allow Defendant to prepare the witness as it must. Therefore, the Court grants
20 Defendant’s request for a protective order as to Topic 39, but does so without prejudice to Plaintiff.
21 The Court orders the parties to meet and confer regarding amending this deposition topic such that
22 Plaintiff’s intent and the scope of the topic is clear.

23 Finally, the parties agree on the scope of deposition Topic 48. Thus, the Court need not
24 address this topic except to adopt the Court’s ruling limiting Topic 48 to inquiry regarding safety
25 reports for a six month period, covering Defendant’s Nevada stores and general liability incidents
26 only.

IT IS HEREBY ORDERED that, consistent with the contents of this Order, Defendant Cardenas Markets, LLC's Motion for Protective Order re 30(b)(6) Topics (ECF No. 22) is GRANTED in part, DENIED in part, moot in part, and held in abeyance in part until Defendant's Objection to the Court's March 12, 2025 Order is ruled upon.

Dated this 19th day of June, 2025.


ELAYNA J. YOUCHAK
UNITED STATES MAGISTRATE JUDGE